

APPEAL NO. 022132
FILED OCTOBER 7, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 21, 2002, with the record remaining open until July 19, 2002. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) compensable injury, an occupational disease to both her hands and wrists, of _____, does not extend to or include any injury to the claimant's right or left shoulder, cervical spine, thoracic or lumbar spine, thoracic brachial plexus, or any other part of her body and that the claimant had disability from November 1, 2000, through March 3, 2001, but did not have disability after March 4, 2001. The claimant appeals, arguing that the determinations regarding extent of injury and no disability after March 4, 2001, are against the great weight of the evidence. The claimant additionally argues that the hearing officer improperly denied her motion to add statements of issue and her motion for reconsideration to add additional issues. The hearing officer found that there was no good cause for the addition of the requested issues. The claimant also complains of the respondent's (carrier) responses to interrogatories. The appeal file does not contain a response from the carrier.

DECISION

Affirmed as reformed.

The claimant argues that it is common knowledge that those with carpal tunnel syndrome complain of wrist and hand pain and eventually complain of elbow, shoulder, neck and upper back pain. We disagree. See Texas Workers' Compensation Commission Appeal No. 002307, decided November 15, 2000. The Appeals Panel has required that the necessary proof of causation be established to a reasonable medical probability by expert evidence in cases such as the one we here consider where the subject matter is so complex that a fact finder lacks the ability from common knowledge to find a causal connection. Texas Workers' Compensation Commission Appeal No. 93774, decided October 15, 1993; Texas Workers' Compensation Commission Appeal No. 94815, decided August 4, 1994. See *also* Schaeffer v. Texas Employers Insurance Association, 612 S.W.2d 199 (Tex. 1980). The claimant's representative noted himself at the CCH that there were not sufficient medical records.

The claimant contends that the hearing officer's extent-of-injury and disability determinations are against the great weight of the evidence. The hearing officer found that the claimant failed to provide necessary medical evidence to show a reasonable medical probability that her carpal tunnel syndrome had directly and naturally developed into, or caused the development of, any medical problems in or injuries to her right or left shoulder, neck, or mid-back or low back areas. The hearing officer resolved the conflicts and inconsistencies in the evidence in favor of the carrier, and he was acting within his province as the fact finder in so doing. Our review of the record does not

demonstrate that the challenged determinations are so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

Section 410.151(b) provides, in part, that an issue not raised at a benefit review conference (BRC) may not be considered unless the parties consent or, if the issue was not raised, the Texas Workers' Compensation Commission determines that good cause exists for not requesting the issue at the BRC. The hearing officer found that there was no good cause to add the disputed issues requested by the claimant. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)), effective March 13, 2000, provides that Section 409.021 and the implementing provisions of this statute in Rule 124.3(a) "do not apply to disputes of extent of injury." The hearing officer noted in his "Order on Request for Additional Disputed Issue[s]" that Rule 124.3(c) does not apply to extent-of-injury issues. The hearing officer additionally noted that the wording regarding the change of treating doctor issue would constitute an evidentiary matter instead of a matter of pleadings. We perceive no abuse of discretion on the part of the hearing officer denying the motion requesting to add the additional issue and the motion for reconsideration. Downer v. Aquamarine Operations, Inc., 701 S.W.2d 238 (Tex. 1985). Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The claimant additionally asserts various arguments regarding the change of treating doctor issue. It is noted that this finding is favorable to the claimant. As such, the claimant is not aggrieved by the finding and we decline to give it further consideration.

The claimant complained about various answers to interrogatories by the carrier at both the CCH and on appeal. The claimant argues on appeal that the carrier has "waivered from using any evidence showing extent of injury to claimant's shoulder and back." However, the claimant did not object to any of the evidence offered by the carrier at the CCH and the hearing officer made his decision on the evidence included in the record. The claimant additionally disputes the nonresponsiveness of some of the carrier's answers to interrogatories propounded by the claimant. We find no merit in the claimant's assertion regarding the interrogatory answers.

The claimant correctly notes that although the hearing officer made a specific finding that the claimant is entitled to change her treating doctor from Dr. S, to Dr. F, he failed to include that fact in his decision. The decision is reformed to state that the claimant is entitled to change her treating doctor from Dr. S to Dr. F.

We affirm the decision and order of the hearing officer, as reformed.

The true corporate name of the insurance carrier is **FIDELITY & GUARANTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY
800 BRAZOS
AUSTIN, TX 78701**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge